

REMARKS

Claims 1-50 were previously canceled. Claims 51-56 were pending in the present application. In this Reply, applicants have amended claim 51 and added new claims 57-66. As discussed below, the amendments and new claims are fully supported by the application as filed and do not include new matter. After entry of the amendments, claims 51-66 are pending in the present application.

Amended Claim 51 and New Claims 57-66 Do Not Add New Matter

Amended claim 51 is fully supported in the application as filed in at least p.12, line 5 – p. 14, line 1. New claims 57-63 are fully supported in the application as filed in at least FIG. 5 and the accompanying text, and p.12, line 5 – p.14, line 1. New claims 64-66 are fully supported in the application as filed in at least FIG. 5 and the accompanying text, and p.17, line 13 – p.19, line 12. Accordingly, amended claim 51 and new claims 57-66 do not include new matter.

The Amendments are Made Solely to Expedite Prosecution

The amendments are made solely to expedite prosecution of the present application and should not be construed to fall under file wrapper estoppel. Specifically, applicants submit that previous claims 51-56 were already patentable over the documents cited in the May 29, 2008 Office Action, i.e., U.S. Patent No. 6,804,660, to Landau et al. (hereinafter “Landau”), and U.S. Patent Application Publication No. 2001/0034646, to Hoyt et al. (hereinafter “Hoyt”). In particular, previous claims 51-56 were patentable over Landau for the reasons specified in applicants’ Amendment and Reply filed November 7, 2006. Additionally, previously claims 51-56 were patentable over Hoyt at least because applicants’ claimed invention pre-dates Hoyt. Applicants’ Declaration for the present application was signed and dated January 3, 2001. Hoyt has a critical date of January 25, 2001 (Hoyt’s filing date) because there is no discussion of central server operations or compensation of multiple affiliates in the provisional application to which Hoyt claims priority (U.S. Provisional Application No. 60/178,260, filed January 25, 2000). (See MPEP § 2136.03(III)). Thus, Hoyt post-dates applicants’ claimed invention.

For the reasons above, applicants submit that previous claims 51-56 were already patentable over Landau and Hoyt. Thus, the amendments in this Reply are made solely to expedite prosecution of the present application. Should the Examiner not allow the present

claims, applicants reserve the right to swear back of Hoyt under 37 C.F.R. § 1.131 in a later Reply. (See MPEP § 715).

35 U.S.C. § 112, second paragraph

Previous claims 51-56 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. (See Office Action, p.2). Amended claim 51 addresses all of the indefiniteness issues raised in page 2 of the Office Action. Specifically, amended claim 51 recites that the clearinghouse server is operable to parse HTTP commands received from affiliate servers, that the first affiliate server communicates a HTTP command to the clearinghouse server, and that the second affiliate server communicates a HTTP command to the clearinghouse server. Additionally, the language at issue regarding the merchant server is not in amended claim 51. For these reasons, applicants submit that all of the indefiniteness issues are addressed, and amended claim 51 is definite. Previous claims 52-56 were rejected as being indefinite only because of their dependence upon previous claim 51. Because amended claim 51 is definite, the rejection of dependent claims 52-56 based on previous claim 51 is moot.

35 U.S.C. § 103(a)

Claims 51-56 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0034646, to Hoyt et al. (hereinafter “Hoyt”) in view of U.S. Patent No. 6,804,960, to Landau et al. (hereinafter “Landau”). Applicants traverse these rejections for the reasons discussed below.

Applicants’ claimed technology relates to Internet web sites and, more specifically, to successive web site referrals that result in an electronic purchase. Amended claim 51 recites, among other things:

clearinghouse server is operable to assign compensation to each of said first affiliate website and said second affiliate website in response to (i) a network-connected user’s use of said primary referral link provided by said first affiliate website to reach said second affiliate website; (ii) said user’s use of said secondary referral link provided by said second affiliate website to reach said merchant website; and (iii) said user’s completion of the electronic transaction with said merchant site.

Additionally, amended claim 51 also requires “said first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user’s use of said primary referral link.”

Neither Hoyt nor Landau discloses this feature of amended claim 51. The Examiner recognized in page 10 of the Office Action that “Hoyt does not specifically disclose ‘said HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity’.” Thus, Hoyt does not show or suggest “said first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user’s use of said primary referral link” as required by amended claim 51. Landau does not show or suggest this feature, either. Landau describes a system in which two separate affiliate systems can refer their users to each other without merging the two affiliate systems. This is done by using an Essociate server between the two affiliate systems. (See Landau, col. 15, line 66 – col. 20, line 2). Landau provides an example in which CDMerchant.com is part of one affiliate system and MusicMemoribilia.com is part of another affiliate system, and both are in communication with an Essociate server. (Id.) Fred.com is part of the CDMerchant.com affiliate system, and Landau describes that Fred.com can refer its user to CDMerchant.com, which can then refer the user to MusicMemoribilia.com in the other affiliate system through the Essociate server. (Id.) However, nowhere does Landau describe having Fred.com communicate directly with the Essociate server. If Fred.com did so, there would be no need for successive referrals as Fred.com would be able to directly refer its users to MusicMemoribilia.com. This is not what Landau teaches. Rather, Landau teaches having Fred.com refer its user to CDMerchant.com directly without communicating with the Essociate server, and then having CDMerchant.com refer the user to MusicMemoribilia.com through the Essociate server. Thus, Landau also does not disclose amended claim 51’s feature of “said first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user’s use of said primary referral link.” Because neither Hoyt nor Landau discloses this feature of amended claim 51, applicants submit that amended claim 51 is patentable over Hoyt and Landau, individually or in combination. For the foregoing reasons, applicants submit that amended independent claim 51 is allowable. Claims 52-60 depend upon amended independent claim 51 and are allowable for depending upon an allowable base claim.

In addition to applicants' belief that dependent claims 52-53 are allowable based on their dependency upon an allowable base claim, applicants respectfully disagree with the Examiner's specific rejections of claims 52-53. Applicants additionally traverse the rejection of dependent claims 52-53 for the following reasons. Dependent claims 52 and 53 are directed to assigning compensation to the first affiliate and the second affiliate in various proportions. In page 11 of the Office Action, the Examiner states that "compensation schemes are economic decisions to be agreed between the parties as desired" and "may be dictated by market forces." The Examiner then alleges that economic decisions and market forces would have modified the compensation system in Hoyt in a predictable way to arrive at applicants' claims 52 and 53. (See Office Action, p.11; see also KSR Guidelines, <http://www.uspto.gov/web/offices/com/sol/notices/72fr57526.pdf>, sec. III, Rationale (F)). Applicants respectfully note that the problem with the Examiner's reasoning is that the Examiner does not explain why it would have been predictable for market forces to assign equal compensation to the first affiliate website and the second affiliate website, as required by applicants' claim 52, and why it would have been predictable for market forces to assign greater compensation to the first affiliate website and lesser compensation to the second affiliate website, as required by applicants' claim 53. Applicants respectfully submit that, by not going into the specifics about predictability, the Examiner is merely restating the standard of Rationale F without actually applying the standard. Applicants submit that it would not have been predictable for market forces to provide equal compensation to the first affiliate (claim 52) or greater compensation to the first affiliate (claim 53) because the first affiliate is farther removed than the second affiliate from the merchant website where the purchase occurs, i.e., the merchant website's most direct relationship is with the second affiliate. If the Examiner maintains a rejection based on Rationale F in a later Office Action, if any, applicants respectfully request an explanation of why market forces would have modified Hoyt in a predictable way to arrive at applicants' claims 52 and 53. Indeed, this explanation is what the KSR Guidelines require in sec. III, sub-section F: "To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate [five findings based on the *Graham* factual inquiries.]"

New Claims 57-60

New claims 57-60 depend upon amended independent claim 51, which is allowable for the reasons discussed above. Accordingly, dependent claims 57-60 are allowable for depending upon an allowable base claim. Furthermore, applicants note that the features of new claim 57-60 are not shown in either Hoyt or Landau. Specifically, each of dependent claims 57-60 requires the primary referral link to include a sub-link connecting the first affiliate server to the clearinghouse server and another sub-link connecting the clearinghouse server to the second affiliate server. Neither Hoyt nor Landau shows or suggests this feature. Rather, Hoyt describes directly connecting a user from the first server to the second server, and having the second server communicate with the RLS central server to obtain information about the first server. (See Hoyt, p.8, para. [0065]). Thus, the referral in Hoyt from the first server to the second server does not include sub-links through the clearinghouse server. Landau, as discussed above, does not show or suggest having Fred.com communicate with the Essociate server at all. Thus, the referral in Landau from Fred.com to CDMerchant.com does not include sub-links through the Essociate server. Because neither Hoyt nor Landau shows or suggests the features of claims 57-60, dependent claims 57-60 are allowable for this reason, as well.

New Claims 61-66

New claims 61-66 are directed to operations at the clearinghouse server in the situation where referral links connect a user computer to the clearinghouse server, and the clearinghouse server then redirects the user computer to the referred destination. New independent claims 61 and 64 are patentable over Hoyt and Landau because each requires “a user computer connecting to said clearinghouse server as a result of accessing a first referral link in a web page of a first server, wherein said first referral link corresponds to a referral from said first server to a second server.” In the chain of referrals from a first server to a second server to a merchant, neither Hoyt nor Landau shows or suggests a first referral, from the first server to the second server, that connects a user computer to the clearinghouse server and having the clearinghouse server redirect the user computer to the second server. Rather, Hoyt describes directly connecting a user from the first server to the second server, and having the second server communicate with the RLS central server to obtain information about the first server. (See Hoyt, p.8, para. [0065]). Thus, the referral in Hoyt from the first server to the second server does not connect a user

computer to the clearinghouse server. Landau does not show or suggest having a user of Fred.com's web page connect to the Essociate server. Rather, the user computer connects directly to CDMerchant.com. Because neither Hoyt nor Landau shows this feature, applicants submit that new independent claims 61 and 64 are allowable. Claims 62-63 depend upon independent claim 61 and claims 65-66 depend upon independent claim 64. Dependent claims 62, 63, 65, and 66 are allowable for depending upon an allowable base claim.

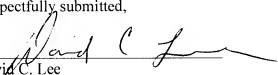
Conclusion

In view of the foregoing, applicants submit that claims 51-66 are allowable. Accordingly, reconsideration and allowance of these claims are respectfully requested.

No fee is believed to be due with this submission, other than the fees for the request for continued examination and extension of time authorized in page 1 of this Reply. However, if any other fees are due, please charge such fees to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310.

Respectfully submitted,

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